

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

PRESBY ENVIRONMENTAL, INC.)
)
)
V.) CASE NO. 13-CV-355-SM
)
ADVANCED DRAINAGE SYSTEMS, INC.)

DEFENDANT'S OBJECTION TO
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

Defendant Advanced Drainage Systems, Inc. (“ADS”) hereby objects to Plaintiff Presby Environmental, Inc.’s (“Presby”) Motion for Leave to Amend Complaint, filed on May 23, 2014 (“Presby’s Motion”). As explained further in the Memorandum in Support of this Objection, Presby’s Motion should be denied for several reasons:

1. Presby’s Motion is untimely, being filed nearly five months after the December 30, 2013 deadline for amendments set in the Court’s Scheduling Order.
2. Because the deadline for amendments to the Complaint, in as set by the Scheduling Order, has passed, Presby’s Motion is governed by Federal Rule of Civil Procedure 16(b), not Rule 15 as Presby incorrectly assumes. Rule 16(b) requires a party to show “good cause” for seeking an untimely amendment to a complaint.
3. Presby has not shown “good cause” for its failure to seek to amend its Complaint by the December 30, 2013 deadline set in the Court’s Scheduling Order. In fact, Presby admits it was aware of all of the newly-proposed allegations well before the December 30, 2013 deadline.
4. Although the lack of good cause, by itself, requires Presby’s Motion to be denied, it should also be denied because allowing this untimely amendment will prejudice ADS by

significantly changing the nature of this lawsuit, drastically extending and expanding discovery, and likely delaying trial.

5. Finally, the proposed amendment is futile, in whole or in large part, because Presby's proposed Amended Complaint still suffers from numerous legal defects.

For all these reasons, ADS respectfully requests that this Court deny Presby's Motion For Leave To Amend Complaint.

Respectfully submitted,

ADVANCED DRAINAGE SYSTEMS, INC.

By their Attorneys

**RANSMEIER & SPELLMAN
PROFESSIONAL CORPORATION**

Dated: June 9, 2014

By: */s/ Daniel J. Mullen*

Daniel J. Mullen, Esq. (#1830)
Ransmeier & Spellman, PC
One Capitol Street, P.O. Box 600
Concord, NH 03302-0600
dmullen@rancell.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was provided to plaintiff's counsel, David Rayment, Esquire, via ECF.

/s/ Daniel J. Mullen